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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
12  
13

14 **ASSOCIATION OF AMERICAN**  
15 **RAILROADS and AMERICAN SHORT**  
16 **LINE AND REGIONAL RAILROAD**  
**ASSOCIATION,**

17 Plaintiffs,

18 v.

19 **LIANE M. RANDOLPH, in her official**  
20 **capacity as Chair of the California Air**  
21 **Resources Board; STEVEN S. CLIFF, in**  
22 **his official capacity as Executive**  
23 **Officer of the California Air Resources**  
**Board; and ROB BONTA, in his official**  
**capacity as Attorney General of the**  
**State of California,**

24 Defendants  
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2:23-cv-1154 DJC JDP

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEFENDANTS' CROSS-  
MOTION FOR SUMMARY JUDGMENT  
OR, IN THE ALTERNATIVE, MOTION  
FOR A STAY OR DISMISSAL UNDER  
THE PRIMARY JURISDICTION  
DOCTRINE, AND DEFENDANTS'  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

Date: April 25, 2024  
Time: 1:30 PM  
Courtroom: 10 (13th Floor)  
Judge: Hon. Daniel J. Calabretta  
Trial Date: Not Set  
Action Filed: June 16, 2023

1 Pursuant to Rule 201 of the Federal Rules of Civil Evidence, Defendants  
2 respectfully request the Court take judicial notice of the following facts and documents.

3 **I. DOCUMENTS ON GOVERNMENT WEBSITES TO BE JUDICIALLY NOTICED**

4 1. Excerpts from the Memorandum of Understandings and Agreements between  
5 the California Air Resources Board and the Burlington Northern Santa Fe and Union  
6 Pacific Railroads, dated 1998 (1998 MOU), a true and correct copy of which is attached  
7 to the Declaration of Michael S. Dorsi as Exhibit 1. The entire document is publicly  
8 available at <https://ww2.arb.ca.gov/sites/default/files/2021-02/1998MOU.pdf> and was  
9 downloaded from that URL on March 3, 2024.

10 2. ARB/Railroad Statewide Agreement: Particulate Emissions Reduction  
11 Program at California Rail Yards, dated 2005 (2005 MOU), a true and correct copy of  
12 which is attached to the Declaration of Michael S. Dorsi as Exhibit 2. Exhibit 2 is publicly  
13 available at [https://ww2.arb.ca.gov/sites/default/files/2020-](https://ww2.arb.ca.gov/sites/default/files/2020-06/2005%20MOU%20Remediated%2003102020.pdf)  
14 [06/2005%20MOU%20Remediated%2003102020.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-06/2005%20MOU%20Remediated%2003102020.pdf) and was downloaded from that  
15 URL on February 28, 2024.

16 3. Comments of the Association of American Railroads to the United States  
17 Environmental Protection Agency in response to EPA's notice of proposed rulemaking  
18 on emissions standards for locomotive and marine engines, dated July 2, 2007, a true  
19 and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 3.  
20 Exhibit 3 is publicly available at [https://downloads.regulations.gov/EPA-HQ-OAR-2003-](https://downloads.regulations.gov/EPA-HQ-OAR-2003-0190-0566/attachment_1.pdf)  
21 [0190-0566/attachment\\_1.pdf](https://downloads.regulations.gov/EPA-HQ-OAR-2003-0190-0566/attachment_1.pdf) and was downloaded from that URL on March 1, 2024.

22 4. Excerpts from the Petition for a Brake System Safety Standards Rulemaking,  
23 submitted by the Association of American Railroads to the Federal Railroad  
24 Administration and dated July 12, 2018, a true and correct copy of which is attached to  
25 the Declaration of Michael S. Dorsi as Exhibit 4. Exhibit 4 is publicly available at  
26 <https://www.regulations.gov/document/FRA-2018-0093-0002> and was downloaded from  
27 that URL on February 26, 2024.  
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1           5.    Update of Mineral Land Classification for Portland Cement Concrete-Grade  
2   Aggregate in the Palm Springs Production-Consumption Region, Riverside County,  
3   California, by the California Geological Survey, Department of Conservation, dated 2007,  
4   a true and correct copy of which is attached to the Declaration of Michael S. Dorsi as  
5   Exhibit 9. Exhibit 9 is publicly available at  
6   [https://www.conservation.ca.gov/cgs/Documents/Publications/Special-Reports/SR\\_198-](https://www.conservation.ca.gov/cgs/Documents/Publications/Special-Reports/SR_198-MLC-Report.pdf)  
7   [MLC-Report.pdf](https://www.conservation.ca.gov/cgs/Documents/Publications/Special-Reports/SR_198-MLC-Report.pdf) and was downloaded from that URL on March 2, 2024.

8           6.    The webpage “Learn About Idling Reduction for Locomotives” on the  
9   Environmental Protection Agency webpage, a true and correct copy of which is attached  
10   to the Declaration of Michael S. Dorsi as Exhibit 13. Exhibit 13 is publicly available at  
11   <https://www.epa.gov/verified-diesel-tech/learn-about-idling-reduction-locomotives> and  
12   was downloaded from that URL on March 1, 2024.

13          7.    Excerpts from California’s Fourth Climate Change Assessment, Statewide  
14   Summary Report, dated August 2018, true and correct copies of which are attached to  
15   the Declaration of Michael S. Dorsi as Exhibit 14. Exhibit 14 is publicly available at  
16   [https://www.energy.ca.gov/sites/default/files/2019-11/Statewide\\_Reports-SUM-CCCA4-](https://www.energy.ca.gov/sites/default/files/2019-11/Statewide_Reports-SUM-CCCA4-2018-013_Statewide_Summary_Report_ADA.pdf)  
17   [2018-013\\_Statewide\\_Summary\\_Report\\_ADA.pdf](https://www.energy.ca.gov/sites/default/files/2019-11/Statewide_Reports-SUM-CCCA4-2018-013_Statewide_Summary_Report_ADA.pdf) and was downloaded from that URL  
18   on March 2, 2024.

19          8.    The webpage “Truck vs. Train Emissions Analysis” from the California Air  
20   Resources Board website, dated September 23, 2020, a true and correct copy of which  
21   is attached to the Declaration of Michael S. Dorsi as Exhibit 15. Exhibit 15 was is publicly  
22   available at [https://ww2.arb.ca.gov/resources/fact-sheets/truck-vs-train-emissions-](https://ww2.arb.ca.gov/resources/fact-sheets/truck-vs-train-emissions-analysis)  
23   [analysis](https://ww2.arb.ca.gov/resources/fact-sheets/truck-vs-train-emissions-analysis)<https://ww2.arb.ca.gov/resources/fact-sheets/truck-vs-train-emissions-analysis> and was  
24   downloaded from that URL on March 3, 2024.

25          9.    Excerpts from the California’s 2022 State Strategy for the State  
26   Implementation Plan, true and correct copies of which are attached to the Declaration of  
27   Michael S. Dorsi as Exhibit 16. The complete document is publicly available at  
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1 [https://ww2.arb.ca.gov/sites/default/files/2022-08/2022\\_State\\_SIP\\_Strategy.pdf](https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf) and was  
2 downloaded from that URL on March 3, 2024.

3 10. Letter from California Air Resource Board to Regional Administrator for the  
4 United States Environmental Protection Agency, Region 9, submitting the South Coast  
5 Air Quality Management District's 2022 Air Quality Management Plan, a true and correct  
6 copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 17. Exhibit 17  
7 is publicly available at [https://ww2.arb.ca.gov/sites/default/files/2023-  
8 03/2022\\_SC\\_AMQP\\_SSS\\_Submittal\\_Letter\\_to\\_EPA.pdf](https://ww2.arb.ca.gov/sites/default/files/2023-03/2022_SC_AMQP_SSS_Submittal_Letter_to_EPA.pdf) and was downloaded from that  
9 URL on March 3, 2024.

10 11. California Air Resources Board Resolution 23-12, a true and correct copy of  
11 which is attached to the Declaration of Michael S. Dorsi as Exhibit 23. Exhibit 23 is  
12 publicly available at  
13 <https://ww2.arb.ca.gov/sites/default/files/barcu/board/res/2023/res23-12.pdf> and was  
14 downloaded from that URL on March 4, 2024.

15 12. California Air Resources Board Executive Order R-23-004, Relating to the  
16 Proposed In-Use Locomotive Regulation, a true and correct copy of which is attached to  
17 the Declaration of Michael S. Dorsi as Exhibit 24. Exhibit 24 is publicly available at  
18 <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/eo.pdf> and was  
19 downloaded from that URL on March 4, 2024.

20 13. California Air Resources Board Second Notice of Public Availability of Modified  
21 Text and Availability of Additional Documents and Information, a true and correct copy of  
22 which is attached to the Declaration of Michael S. Dorsi as Exhibit 25. Exhibit 25 is  
23 publicly available at  
24 [https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/2nd15daynotic  
25 e1.pdf](https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/2nd15daynotice1.pdf) and was downloaded from that URL on March 4, 2024.

26 The facts established by Exhibits 1, 2, 3, 4, 9, 13, 14, 15, 16, 17, 23, 24, 25, and  
27 those documents themselves, are proper subjects of judicial notice. The documents are  
28 publicly available on government websites and the facts for which they are relied upon

1 here can be accurately and readily determined from these sources whose accuracy  
2 cannot reasonably be questioned. See *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992,  
3 998–99 (9th Cir. 2010) (stating that it was appropriate to take judicial notice of  
4 information “made publicly available by government entities” on their websites where  
5 “neither party disputes the accuracy of the web sites or the accuracy of the information  
6 displayed herein”); *Martinez v. Mead Johnson & Co., LLC*, No. 22-CV-213, 2022 WL  
7 15053334, at \*4 (C.D. Cal. Oct. 22, 2022) (finding that FDA guidance was judicially  
8 noticeable because it was “publicly available and it was disseminated by a government  
9 agency”); *Hansen Beverage Co. v. Innovation Ventures, LLC*, No. 08-CV-1166, 2009 WL  
10 6597891, at \*2 (S.D. Cal. 2009) (“Information on government agency websites has often  
11 been treated as properly subject to judicial notice.”).

## 12 II. FACTS TO BE JUDICIALLY NOTICED

13 14. The fact that Union Pacific Railroad Company advertises domestic intermodal  
14 service, as described on the webpage “Domestic Intermodal Service” from the Union  
15 Pacific website, a true and correct copy of which is attached to the Declaration of  
16 Michael S. Dorsi as Exhibit 5. Exhibit 5 is publicly available at  
17 [https://www.up.com/customers/premium/IntermodalServices/domestic-](https://www.up.com/customers/premium/IntermodalServices/domestic-intermodal/index.htm)  
18 [intermodal/index.htm](https://www.up.com/customers/premium/IntermodalServices/domestic-intermodal/index.htm) and was downloaded from that URL on March 3, 2024.

19 15. The fact that Burlington Northern Santa Fe Railway offers services to move  
20 “high volumes of single commodities from a single origin to a single destination,” as  
21 shown on the webpage “Ways of Shipping” from the Burlington Northern Santa Fe  
22 website, a true and correct copy of which is attached to the Declaration of Michael S.  
23 Dorsi as Exhibit 6. Exhibit 6 is publicly available at [https://www.bnsf.com/ship-with-](https://www.bnsf.com/ship-with-bnsf/ways-of-shipping/index.page)  
24 [bnsf/ways-of-shipping/index.page](https://www.bnsf.com/ship-with-bnsf/ways-of-shipping/index.page) and was downloaded from that URL on March 3,  
25 2024.

26 16. The fact that Mendocino Railway offers “local and interchange” routes, as  
27 shown in the Mendocino Railway Freight Tariff CWR 9500, a true and correct copy of  
28 which is attached to the Declaration of Michael S. Dorsi as Exhibit 7. Exhibit 7 was

downloaded from <https://www.skunktrain.com/wp-content/uploads/2022/02/MENDOCINO-2021-FREIGHT-TARIFF-FINAL.pdf> on March 3, 2024.

17. The fact that Union Pacific Railway Company moves sand and gravel from extraction sites to processing plants on two routes entirely within California, as described in the article *Rock-by-Rail*, by Loretta Sorenson and Pit & Quarry Staff, published in Pit & Quarry on February 1, 2014, a true and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 8. Exhibit 8 is publicly available at <https://www.pitandquarry.com/rock-by-rail/> and was downloaded from that URL on March 2, 2024.

18. The fact that Burlington Northern Santa Fe Railway offers transloading services, as described in the article *The Ever-Changing Dynamics of Shortline Railroading*, by David Lustig, published by Trains Magazine on February 1, 2024, a true and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 10. Exhibit 10 is publicly available at <https://www.trains.com/trn/railroads/history/the-ever-changing-dynamics-of-shortline-railroading/> and was downloaded from that URL on February 7, 2024.

19. The fact that a company called DrayNow advertises an app by which trucking businesses can gain access to the California intermodal market, as described in the blog post *Tap Into the California Intermodal Drayage Markets: Los Angeles & Northern California*, on the website DrayNow.com, a true and correct copy of which is attached to the Declaration of Michael S. Dorsi as Exhibit 11. Exhibit 11 was downloaded from <https://draynow.com/tap-into-the-california-intermodal-drayage-markets/> on March 3, 2024.

20. The fact that California has many highly-populated cities that suffer from extremely high levels of ozone and PM2.5 pollution, from excerpts of the American Lung Association's 2023 State of the Air Report, true and correct copies of which are attached to the Declaration of Michael S. Dorsi as Exhibit 18. The complete document is available

1 at [https://www.lung.org/getmedia/338b0c3c-6bf8-480f-9e6e-b93868c6c476/SOTA-](https://www.lung.org/getmedia/338b0c3c-6bf8-480f-9e6e-b93868c6c476/SOTA-2023.pdf)  
2 [2023.pdf](https://www.lung.org/getmedia/338b0c3c-6bf8-480f-9e6e-b93868c6c476/SOTA-2023.pdf) and was downloaded from that URL on March 2, 2024.

3 21. The fact that California has struggled for years to reduce its ozone pollution,  
4 as described in the article *This 1943 “Hellish Cloud” Was the Most Vivid Warning of LA’s*  
5 *Smog Problems to Come*, by Kat Eschner, published in Smithsonian Magazine’s Smart  
6 News on July 26, 2017, a true and correct copy of which is attached to the Declaration of  
7 Michael S. Dorsi as Exhibit 19. Exhibit 19 is publicly available at  
8 [https://www.smithsonianmag.com/smart-news/1943-hellish-cloud-was-most-vivid-](https://www.smithsonianmag.com/smart-news/1943-hellish-cloud-was-most-vivid-warning-las-smog-problems-come-180964119/)  
9 [warning-las-smog-problems-come-180964119/](https://www.smithsonianmag.com/smart-news/1943-hellish-cloud-was-most-vivid-warning-las-smog-problems-come-180964119/) and was downloaded from that URL on  
10 March 2, 2024.

11 22. The definition of “transloading” provided on the webpage “What is  
12 Transloading in Logistics?” from the Boa Logistics website, a true and correct copy of  
13 which is attached to the Declaration of Michael S. Dorsi as Exhibit 20. Exhibit 20 is  
14 publicly available at <https://www.boalogistics.com/drayage/what-is-transloading/> and was  
15 downloaded from that URL on March 3, 2024.

16 23. The fact that Burlington Northern Santa Fe Railway offers multiple intermodal  
17 hubs in California, as shown on the Burlington Northern Santa Fe Railway website, a  
18 true and correct copy of which is attached to the Declaration of Michael S. Dorsi as  
19 Exhibit 21. Exhibit 21 is publicly available at [https://www.bnsf.com/ship-with-](https://www.bnsf.com/ship-with-bnsf/support-services/facility-listings.page)  
20 [bnsf/support-services/facility-listings.page](https://www.bnsf.com/ship-with-bnsf/support-services/facility-listings.page) and was downloaded from that URL on March  
21 3, 2024.

22 Because they are contained in Exhibits 5, 6, 7, 8, 10, 11, 18, 19, 20, and 21, the  
23 facts listed above are “not subject to reasonable dispute” because they “can be  
24 accurately and readily determined from sources whose accuracy cannot reasonably be  
25 questioned.” Fed. R. Civ. P. 201(b).

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Dated: March 5, 2024

Respectfully submitted,

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